

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

ANDREW E. ROTH,

Plaintiff,

-against-

ARMISTICE CAPITAL, LLC, ARMISTICE  
CAPITAL MASTER FUND LTD., STEPHEN  
J. BOYD, and VAXART INC.,

Defendants.

Case No. 1:20-cv-08872 (JLR)

**ORDER**

JENNIFER L. ROCHON, United States District Judge:

The Court is in receipt of a letter from Armistice Defendants (or “Defendants”) requesting a status conference to discuss the timing of their anticipated motion to dismiss for subject matter jurisdiction, and specifically, to stay the summary judgment briefing schedule in order to brief their motion to dismiss. ECF No. 95. Plaintiff opposes that request, and asks that the two motions be briefed on parallel tracks. ECF No. 96. Plaintiff also argues that Defendants’ motion to dismiss on standing grounds is belated, and without merit. *Id.*


Without opining on the merits of Defendants’ anticipated motion to dismiss on standing grounds, the Court does note that it appears that the only recent development in case law related to Plaintiff’s standing is a decision out of the Eastern District of New York, which is not binding on this Court. *See Packer on Behalf of 1-800 Flowers.com, Inc. v. Raging Capital Management, LLC*, No. 15-cv-05933 (JMW), 2023 WL 2484442 at \*10 (E.D.N.Y. March 13, 2023). As Plaintiff notes, that Supreme Court decision that the *Packer* court relies on, *TransUnion LLC v. Ramirez*, 141 S. Ct. 2190, 2203 (2021), was decided about two years ago, and Defendants did not raise standing issues until the April 26, 2023 discovery conference in this case. Therefore, the Court is not inclined to stay summary judgment briefing in its entirety at this time.

Accordingly, IT IS HEREBY ORDERED that Defendants shall file their motion to dismiss and motion for summary judgment no later than **June 1, 2023**, Plaintiff shall file his opposition briefs no later than **June 29, 2023**, and Defendants shall file their replies no later than **July 19, 2023**.

IT IS FURTHER ORDERED that the deadline to file pretrial submissions is adjourned without date.

Dated: May 11, 2023  
New York, New York

SO ORDERED.

  
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JENNIFER L. ROCHON  
United States District Judge